IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 456 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? Yes. To all criminal courts in the State

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STATE OF GUJARAT

Versus

SANDEEP BHANDARI

Appearance:

Shri M.A. Bukhari, Additional Public Prosecutor, for the Appellant-State

Shri J.B. Pardiwala, Advocate, for the Respondent-accused (appointed)

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 07/10/96

ORAL JUDGEMENT

Can a factory owner who exposes his workmen to unsafe working conditions in contravention of the relevant provisions contained in the Gujarat Factories Rules 1963 (the Rules for convenience) framed under the

Factories Act, 1948 (the Act for brief) be leniently dealt with on his pleading guilty to the offence punishable under sec. 92 of the Act? To do so will certainly amount to mockery or travesty of justice. It is unfortunate that the learned Metropolitan Magistrate of Court No. 4 at Ahmedabad does not seem to have realised this while imposing sentence of fine of Rs. 500 on the respondent on his pleading guilty to the offence punishable under sec. 92 of the Act read with rule 61(1)(c)(i) of the Rules.

2. It is not necessary to set out in detail the facts giving rise to this appeal. The respondent herein runs a factory in the name and style of Anil Dyechem Industries Pvt. Ltd. It is engaged in production of dyes intermediates. It appears that some accident was reported and thereupon the Factory Inspector visited the factory in question some time on 7th, 8th and 15th October 1991. It was found that the plant was operated at a pressure greater than the atmospheric pressure. Rule 61(1)(c)(i) of the Rules would require the factory owner in such a case to fit the plant or the machinery with a suitable safety valve or other effective device to ensure that the maximum permissible working pressure of the vessel shall not be exceeded. In the course of the aforesaid visits, the concerned Factory Inspector found that the plant was not fitted with the necessary safety valve in contravention of the aforesaid statutory provision. Thereupon a complaint was lodged on 6th January 1992 in Court No. 4 of the Metropolitan Magistrate's Court at Ahmedabad charging the respondent herein with the offence punishable under sec. 92 of the Act read with rule 61(1)(c)(i) of the Rules. It came to be registered as Criminal Case No. 97 of 1992. The respondent herein as the accused was explained the offence with which he was charged. He pleaded guilty to the charge. Thereupon by the order passed on 28th January 1993 in the aforesaid criminal case, the learned Metropolitan Magistrate of Court No.4 at Ahmedabad sentenced the respondent accused with fine of Rs. 500. The leniency with which the respondent accused was dealt with by the learned Metropolitan Magistrate aggrieved the State Government. It has therefore preferred this appeal before this Court under sec. 377 of the Criminal Procedure Code, 1973 for enhancement of the sentence passed by the learned trial Magistrate.

3. It cannot be gainsaid that rule 61 of the Rules provides for certain safety measures. Provisions for safety measures are made in chapter IV of the Act. The Rules appear to have been made under Chapter IV of the

Act. Section 92 thereof makes the offence resulting in contravention of provisions relating to safety measures to be of an aggravated kind. In that view of the matter, a serious offence can be said to have been committed by the respondent-accused by exposing the workmen of his factory to unsafe working conditions. Not to fit the plant or the machinery of the factory with the necessary safety valve when it was working with the pressure in excess of the atmospheric pressure might have resulted in saving a few bucks on the part of the factory owner, that is, the respondent-accused herein. By his adopting such undue economic drive, the respondent-accused has certainly exposed the workmen of his factory to certain occupational hazards. They might be required to work out of compulsion under such hazardous and unsafe working conditions prevalent in the factory. They have to work for their bread. They might have to feed their own mouths and those of their dependents as well. They might have been left with no choice or alternative but to work in such factories even at the peril of hazards to their persons or even to their lives. Their exposure to such unsafe working conditions in such factories can be said to be their exploitation by owners of such factories. I think the factory owner guilty of contravention of safety provisions has to be dealt with severely and seriously even on his pleading guilty to the charge. He cannot be permitted to profiteer by bypassing safety measures. To let him do so will be detrimental to the interests of the workmen and will tantamount to frustrating the objects of Chapter IV of the Act. I think the learned trial Magistrate was not justified in dealing with the respondent-accused with undue leniency in the matter of sentence even on his pleading guilty to the offence with which he was charged.

4. It may be mentioned at this stage that the respondent-accused has not appeared either in person or through his advocate though duly served. Learned Advocate Shri Pardiwala has been appointed by this Court to represent the respondent-accused in this appeal. Learned Advocate Shri Pardiwala for the respondent-accused has tried to submit that no case for award of the minimum sentence has been made out in the complaint inasmuch as no mention of any serious bodily injury to the injured workmen has been referred to, much less any fatality. It may be noted that the minimum sentence is a guiding factor for award of sentence. It does not mean that a sentence higher than the minimum prescribed under sec. 92 of the Act cannot be awarded if the offence under sec. 92 is proved by evidence or the accused pleads guilty thereto. The seriousness of the

offence can never be lost sight of. It is not the case of the respondent-accused before this Court that it was a plea bargain. No affidavit in support thereof has been filed by or on his behalf in this case. In that view of the matter, the respondent accused cannot and need not be permitted to escape serious consequences arising from his breach of safety measures and contravention of the aforesaid statutory provision on his part. The fine of Rs. 500 only can just be said to be only ridiculous.

5. In view of my aforesaid discussion, I am of the opinion that a fine of Rs. 50,000/- deserves to be imposed on the respondent-accused for the offence he is found to have committed as confessed by him in his pleading guilty thereof. I might have also liked to impose on the respondent-accused the substantive sentence of imprisonment for some period like one month. However, since the incident appears to have occurred more than 5 years ago, I think it would be in the interest of justice to let him off the hook for the time being so far as the substantive sentence of imprisonment is concerned.

6. In the result, this appeal is accepted. The order of sentence passed by the learned Metropolitan Magistrate of Court No.4 at Ahmedabad on 28th January 1993 in Criminal Case No. 97 of 1992 is modified and the fine is enhanced to Rs. 50,000/- in default the respondent-accused shall undergo simple imprisonment for six months. The respondent-accused shall pay the fine within one month from the date of receipt of this order by him.
